IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 928 OF 2004

WITH

CHAMBER SUMMONS NO. 1196 OF 2005

IN

SUMMARY SUIT NO. 2407 OF 2004

M/s. Ampson Engineering
Pvt. Ltd. .. Plaintiffs.

vs.

Bharat Heavy Electricals
Ltd., and Ors. .. Defendants.

Mr. D.H. Mehta a/w A.R. Bapat
for plaintiffs.
Mr. Milind Vasudeo a/w M.G. Gawde
for defendants nos. 1 & 2..

CORAM : S.U. KAMDAR, J.
DATE : 10TH OCTOBER, 2005.

P.C.

. By consent of the parties Chamber Summons No. 1196 of 2005 is taken up on Board and called out. By consent of the parties, the Chamber summons is made absolute. Delay in filing of Vakalatnama on behalf of defendant no. 1 is condoned. Chamber

Summons disposed of accordingly.

2. The present suit is filed for recovery of a sum of Rs. 8,36,968.18 which is the claim arising out of the refund of the amount for wrongful encashment of the bank guarantee under the letter dated 11.1.2002. Minutes of meeting have been arrived at by and between the parties which are signed and which inter alia provide as under :

> "(c) BHEL will bear all statutory expenses such as C. Excise, Sales Tax at the prevailing rate at the time of delivery of tools against the proforma invoice. BHEL agrees to ay for packing bill for the tools at Rs. 15,000.00 + Taxes at the prevailing rate against the proforma invoice at the time of dispatch.
>
> (d) BHEL will surrender the ORIGINAL BANK GUARANTEE to any one of the above mentioned Ampson representatives upon delivery of tools to TCI or any other BHEL approved transporter at Mumbai/Tarapur."

It is not in dispute that pursuant to the said agreement under clauses (c) and (d), the defendant has returned the mould. However, the defendant has in spite of the receipt of the mould has wrongfully

encashed the bank guarantee. My attention is also drawn to the letter dated 23.12.2002 in which the defendant has categorically stated as under :

> "Now that the bank guarantees have been invoked, we assure you that on delivery and acceptance of our moulds at our premises, we shall refund the bank guarantee amounts also along with the packing and transportation charges."

The only defence raised by the defendant is that the present suit is not maintainable as a summary suit. In my opinion, looking at the correspondence which has been exchanged between the parties, an agreement has been arrived at to return the bank guarantee on receipt of the mould. However, after the encashment of the bank guarantee the amount is due and payable under the said letter dated 23.12.2002. In that view of the matter, I do not find any substance in the defence. The said defence is not bonafide and is totally bogus and moonshine. In that view of the matter, I do not find any merit in the present case. However, with a view to give an opportunity to the defendant to defend the suit, I direct the defendant to deposit a sum of Rs. 8,25,000/- in this Court within a period of four weeks failing which the plaintiff will be entitled to a decree. The amount if so deposited, the Prothonotary and Senior Master

is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.